TAN KOON SWAN

v.

PUBLIC PROSECUTOR

COURT OF CRIMINAL APPEAL, SINGAPORE
WEE CHONG JIN CJ
TS SINNATHURAY J
FA CHUA J
[CRIMINAL APPEAL NO. 16 OF 1986]
16 OCTOBER 1986

CRIMINAL LAW AND PROCEDURE: *Abetting in the commission of criminal breach of trust - Appellant sentenced to 2 years' imprisonment and fined $500,000 - Appeal - Principles to be applied - Whether sentence manifestly excessive.*

The appellant pleaded guilty to a charge of abetting a director of a public listed company in committing an offence of criminal breach of trust amounting to $144,852.88. The trial Judge sentenced the appellant to 2 years' imprisonment and fined him $500,000. The maximum sentence permissible under the law was 3 years' imprisonment and unlimited fine. The appellant appealed against sentence.

Held:

[1] The Appellate Court can interfere if the sentence imposed was not justified by law or if the sentencing Judge has made the wrong decision as to the proper factual basis for sentence or if he had erred by failing to appreciate the material placed before him. The Appellate Court can also interfere if it is satisfied that the sentence imposed was wrong in principle or if it was manifestly excessive.

[2] As none of the above was shown to the satisfaction of the Court, and having regard to the circumstances of the case, in particular, the commercial matrix, and the fact that the offence was committed in order to manipulate the market price of a publicly listed company in Singapore, the sentence the trial Judge imposed was not excessive, let alone manifestly excessive.

[Appeal dismissed and sentence affirmed.]

JUDGMENT

Wee Chong Jin CJ, TS Sinnathuray J, FA Chua J:

This is an appeal against the sentence imposed by Mr. Justice Lai on a plea of guilty by the appellant to a charge of abetting a director of a public listed company, Pan Electric Industries Ltd. ('Pan E1') who was also a director of other companies which are subsidiaries of Pan E1 in the commission of the offence of criminal breach of trust. The charge related to breach of trust in respect of $144,852.88 which was the interest due to a stockbroking company in connection with the acquisition of 3 million Grand United Holdings Ltd. ('GUH') shares for $4,778,895 by a Pan E1 subsidiary Orchard Hotel (S) Pte. Ltd.

The sentence imposed on the appellant was one of 2 years' imprisonment and a fine of $500,000; the maximum sentence permissible under the law was one of 3 years' imprisonment and, so far as the fine is concerned, unlimited.

First, it is appropriate to state the principles upon which this Court, as an Appellate Court, should act when considering an appeal as to the sentence imposed by a trial Court. It is axiomatic that each case depends on its own facts. It is also an elementary principle that an Appellate Court can and will interfere if the sentence imposed was not justified by law. Mr. Knight has referred us to a passage in Archbold, which we accept, setting out the principles upon which an Appellate Court acts.

One principle is that the Court can interfere if it is satisfied that the sentencing Judge has made the wrong decision as to the proper factual basis for sentence. In relation to this principle, it has not been shown to our satisfaction by Mr. Karthigesu, who has related in detail the facts which were put before Lai J that he imposed the sentence on a basis other than the proper factual basis. It is to be observed that the facts set out in the Statement of Facts which was read out to the learned Judge were unequivocably accepted by the appellant.

Another principle is that the Court can interfere where it is satisfied that there has been an error on the part of the trial Judge in appreciating the material placed before him. The judgment of the trial Judge sets out fully, and in our opinion, accurately, the background facts which led to the charge against the appellant, which was a misuse of Pan E1 funds in circumstances which amounted to criminal breach of trust. The funds were used to create an artificial price for the shares of GUH. It was accepted by the learned Judge that it was done for the personal benefit of the appellant.

It was the appellant who gave instructions of Tan Kok Liang to go into the open market and manipulate the market price of GUH shares and by raising the price, a result of which was favourable for the appellant. So we are not satisfied that the trial Judge erred in any way in appreciating the material placed before him.

Also, having regard to the facts placed before Lai J which were undisputed by the appellant, the learned Judge found that the offence was not an unpremeditated one in so far as the appellant was concerned.

Another principle is that the Court can interfere if it is satisfied that the sentence was wrong in principle. This has not been shown, and in our opinion, the sentence was on which in no respect can be said to be wrong in principle.

The last principle which we need to refer to is that the Court if satisfied that the sentence imposed was manifestly excessive can interfere.

Having regard to all the circumstances of the case, in particular, having regard to the commercial matrix the background facts and the fact that the offence was committed in order to manipulate the market price of a publicly listed company in Singapore we are of the opinion that the sentence which the trial Judge imposed - of 2 years' imprisonment and $500,000 fine - was not excessive, let alone manifestly excessive.

In the result, this appeal must be dismissed and the sentence affirmed.

Also found at [1987] 1 CLJ 511